

**REMARKS*****Status of the Claims***

Claims 1, 6-9, and 15-48 are pending, with claim 1 being the only pending independent claim. Claims 1 and 6 have been amended for clarity and claims 2-5, 10-14, and 49-55 have been cancelled. More particularly, claims 2-4, 12-14, and 49-55 have been cancelled as being directed to non-elected subject matter pursuant to the restriction requirement of February 7, 2006 without prejudice to or disclaimer of the subject matter contained therein. Applicants expressly reserve the right to file one or more divisional applications directed to the non-elected subject matter. Exemplary support for the claim amendments may be found throughout the specification and the claims as filed. See, for example, cancelled claim 10 and paragraphs [0074] and [0079]-[0082] of the specification. Therefore, no new matter has been added.

Applicants respectfully request the Examiner to reconsider and withdraw the outstanding rejections in view of the foregoing amendments and the following remarks.

***Claim Rejections Under 35 U.S.C. § 102***

Claims 1, 5-11, 26-28, 30-41, and 43-48 are rejected under 35 U.S.C. § 102(b) as allegedly anticipated by FR 2777178 (hereinafter "Simon"; Equivalent to U.S. Patent No. 6,451,294) as further evidenced by Applicants' disclosure. As claims 5, 10, and 11 have been cancelled, the rejection of claims 5, 10, and 11 is moot. With regard to the rejection of claims 1, 6-9, 26-28, 30-41, and 43-48, Applicants respectfully disagree with the rejection; therefore, this rejection is respectfully traversed.

According to M.P.E.P. § 2131, "a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

Simon discloses a cosmetic makeup product comprising a cosmetically acceptable medium, at least one first colorant and at least one second colorant, one of the first and second colorants being a goniochromatic colorant able to produce different colors depending on the light incidence and viewing angle and the other being a monochromatic colorant which produces one of the colors of the goniochromatic colorant. (Col. 2, lines 55-62). The goniochromatic colorants with multilayer structures are in the form of flakes with a metallic

color. (Col. 4, lines 56-67 and Col. 5, lines 1-6). The monochromatic colorants include titanium oxide, zirconium oxide, and of cerium oxide, and also zinc oxide, iron oxide and chromium oxide, carbon black and barium, strontium, calcium and aluminum flakes. (Col. 5, lines 18-47).

In contrast, amended independent claim 1 recites a goniochromatic/light reflecting cosmetic makeup composition, comprising: (a) at least one *goniochromatic coloring agent*; and (b) an amount of light reflective particles different from said at least one goniochromatic coloring agent, wherein the *light reflective particles are particles of a synthetic substrate made from glasses and the light reflective particles are at least partially coated with at least one layer of at least one metallic compound*, formulated into (c) a topically applicable, physiologically acceptable medium therefor.

Simon discloses goniochromatic colorants and monochromatic colorants. However, Simon's monochromatic colorants are not *light reflective particles are particles of a synthetic substrate made from glasses and the light reflective particles are at least partially coated with at least one layer of at least one metallic compound*, as presently recited. More particularly, Simon's monochromatic colorants are not made from glass and are not coated with at least one layer of at least one metallic compound.

Therefore, in light of at least the foregoing, Applicants respectfully submit that amended independent claim 1 is not anticipated by Simon. Moreover, as claims 6-9, 26-28, 30-41, and 43-48 depend directly or indirectly from claim 1, claims 6-9, 26-28, 30-41, and 43-48 are not anticipated by Simon for at least the same reasons.

Accordingly, withdrawal of the rejection under 35 U.S.C. § 102(b) is respectfully requested.

Claims 1, 5-11, 15-20, 26-28, 33-35, 40-42, and 46 are rejected under 35 U.S.C. § 102(b) as allegedly anticipated by FR 2816830 (hereinafter "Blin"; Equivalent to U.S. Pre-Grant Publication No. 2004/0076649). As claims 5, 10, and 11 have been cancelled, the rejection of claims 5, 10, and 11 is moot. With regard to the rejection of claims 1, 6-9, 15-20, 26-28, 33-35, 40-42, and 46, Applicants respectfully disagree with the rejection; therefore, this rejection is respectfully traversed.

Blin discloses a cosmetic composition containing flat fibres, and more especially to a make-up composition for the skin both of the face and of the human body, of the lips and of

superficial body growths such as the nails, the eyelashes, the eyebrows or the hair. (Page 1, paragraph [0001]). Blin also discloses that the cosmetic composition comprises pigments and/or pearlescent agents. (Page 7, paragraph [0127] and Page 8, paragraphs [0128]-[0132]). Blin's pigments include titanium, zirconium or cerium oxides and zinc, iron or chromium oxides, ferric blue, carbon black and barium, strontium, calcium and aluminium lacquers or diketopyrrolopyrrole. (Page 8, paragraph [0129]). Blin's colorants include Sudan red, DC Red 17, DC Green 6,  $\beta$ -carotene, soyabean oil, Sudan brown, DC Yellow 11, DC Violet 2, DC orange 5, quinoline yellow. (Page 8, paragraph [0132]).

In contrast, amended independent claim 1 recites a goniochromatic/light reflecting cosmetic makeup composition, comprising: (a) at least one *goniochromatic coloring agent*; and (b) an amount of light reflective particles different from said at least one goniochromatic coloring agent, wherein the *light reflective particles are particles of a synthetic substrate made from glasses and the light reflective particles are at least partially coated with at least one layer of at least one metallic compound*, formulated into (c) a topically applicable, physiologically acceptable medium therefor.

Blin discloses pigments, pearlescent agents, and colorants. However, Blin's pigments, pearlescent agents, or colorants are not light reflective particles that are *particles of a synthetic substrate made from glasses and at least partially coated with at least one layer of at least one metallic compound*, as presently recited. More particularly, Blin's pigments, pearlescent agents, or colorants are not made from glass and are not coated with at least one layer of at least one metallic compound.

Therefore, in light of at least the foregoing, Applicants respectfully submit that amended independent claim 1 is not anticipated by Blin. Moreover, as claims 6-9, 15-20, 26-28, 33-35, 40-42, and 46 depend directly or indirectly from claim 1, claims 6-9, 15-20, 26-28, 33-35, 40-42, and 46 are not anticipated by Blin for at least the same reasons.

Accordingly, withdrawal of the rejection under 35 U.S.C. § 102(b) is respectfully requested.

Claims 1, 5-11, 15-29, 33-35, 40, 41, and 43-48 are rejected under 35 U.S.C. § 102(a) and (e) as allegedly anticipated by U.S. Patent No. 6,267,810 (hereinafter "Pfaff") as further evidenced by Applicants' disclosure. As claims 5, 10, and 11 have been cancelled, the rejection of claims 5, 10, and 11 is moot. With regard to the rejection of claims 1, 6-9, 15-29,

33-35, 40, 41, and 43-48, Applicants respectfully disagree with the rejection; therefore, this rejection is respectfully traversed.

Pfaff discloses a pigment mixture comprising a component A and a component B, wherein component A comprises  $\text{Al}_2\text{O}_3$  flakes coated with one or more metals, metal oxides or metal sulfides, and wherein component B comprises special-effect pigments. At least a portion of the  $\text{Al}_2\text{O}_3$  flakes in component A comprise  $\text{Al}_2\text{O}_3$  flakes coated with  $\text{TiO}_2$ ,  $\text{Fe}_2\text{O}_3$ , or a mixture of  $\text{TiO}_2$  and  $\text{Fe}_2\text{O}_3$ . Component B of Pfaff comprises i) one or more of metal platelets coated with one or more metal oxides, ii) graphite platelets, iii) aluminum platelets, iv) phyllosilicates, v)  $\text{Fe}_2\text{O}_3$ -flakes,  $\text{SiO}_2$ -flakes, or  $\text{TiO}_2$ -flakes uncoated or coated with one or more metal oxides, vi) glass platelets and or vii) ceramic platelets. (Cols. 1-2). Pfaff further discloses that the pigment mixture can be used for pigmenting coating materials, printing inks, plastics, agricultural films, button pastes, for the coating of seed, for the coloring of food, coatings of medicaments or cosmetic formulations. (Col. 3, lines 5-9). More particularly, Pfaff discloses metal effect pigments, such as aluminum, copper, zinc, tin and their alloys. (Col. 2, lines 33-37). Pfaff also discloses aluminum and gold bronze alloys as preferred metal effect pigments. (Col. 2, lines 37-38). Moreover, Pfaff discloses pigment mixtures that preferably comprise uncoated and coated platelet-shaped iron oxide, aluminum flakes or coated aluminum flakes. (Col. 2, lines 40-42).

In contrast, amended independent claim 1 recites a goniochromatic/light reflecting cosmetic makeup composition, comprising: (a) at least one goniochromatic coloring agent; and (b) an amount of light reflective particles different from said at least one goniochromatic coloring agent, wherein the light reflective particles are particles of a synthetic substrate made from glasses and the light reflective particles are at least partially coated with at least one layer of at least one metallic compound, formulated into (c) a topically applicable, physiologically acceptable medium therefor.

Pfaff's pigment mixture comprises components A and B. Component A comprises  $\text{Al}_2\text{O}_3$  flakes coated with one or more metals, metal oxides or metal sulfides. Component B of Pfaff comprises i) one or more of metal platelets coated with one or more metal oxides, ii) graphite platelets, iii) aluminum platelets, iv) phyllosilicates, v)  $\text{Fe}_2\text{O}_3$ -flakes,  $\text{SiO}_2$ -flakes, or  $\text{TiO}_2$ -flakes uncoated or coated with one or more metal oxides, vi) glass platelets and or vii) ceramic platelets.  $\text{SiO}_2$  flakes are merely listed in Pfaff as one of many possible pigments. It should also be noted that Pfaff's Examples do not include the use of any  $\text{SiO}_2$  particles.

Further, Pfaff discloses that the pigment mixture can be used for pigmenting coating materials, printing inks, plastics, agricultural films, button pastes, for the coating of seed, for the coloring of food, coatings of medicaments or cosmetic formulations. Therefore, Pfaff merely lists that the pigment mixture can be used for cosmetic formulations among many different uses that are not related to the field of cosmetic formulations.

Applicants respectfully submit that none of the Examples in Pfaff disclose SiO<sub>2</sub> particles. More particularly, Example 4, which is directed to a cosmetic formulation, does not use any SiO<sub>2</sub> particles.

As such, Applicants respectfully submit that Pfaff's disclosure does not include any express teachings wherein one of ordinary skill in the art can obtain a goniochromatic/light reflecting cosmetic makeup composition, comprising: (a) at least one goniochromatic coloring agent; and (b) an amount of light reflective particles different from said at least one goniochromatic coloring agent, wherein the light reflective particles are particles of a synthetic substrate made from glasses and the light reflective particles are at least partially coated with at least one layer of at least one metallic compound, formulated into (c) a topically applicable, physiologically acceptable medium therefor.

Therefore, in light of at least the foregoing, Applicants respectfully submit that amended independent claim 1 is not anticipated by Pfaff. Moreover, as claims 6-9, 15-29, 33-35, 40, 41, and 43-48 depend directly or indirectly from claim 1, claims 6-9, 15-29, 33-35, 40, 41, and 43-48 are not anticipated by Pfaff for at least the same reasons.

Accordingly, withdrawal of the rejection under 35 U.S.C. § 102(a) and (e) is respectfully requested.

### ***Double Patenting***

Claims 1, 5-11, 30-35, 42, and 44-48 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 66-73, 111-124, 143 and 144 of co-pending Application No. 10/432,329. As claims 5, 10, and 11 have been cancelled, the rejection of claims 5, 10, and 11 is moot. With regard to the rejection of claims 1, 6-9, 30-35, 42, and 44-48, Applicants respectfully disagree with the rejection; therefore, this rejection is respectfully traversed.

In the '329 application, claim 66 is the only independent claim cited by the Examiner in the present obviousness-type double patenting rejection. Independent claim 66 in the '329

application recites a composition comprising, in a physiologically acceptable medium, interferential particles exhibiting a color effect and at least one additional coloring agent, wherein said at least one additional coloring agent is present in a quantity that does not mask the color effect of said interferential particles.

In contrast, amended independent claim 1, in the present application, recites a goniochromatic/light reflecting cosmetic makeup composition, comprising: (a) at least one *goniochromatic coloring agent*; and (b) an amount of *light reflective particles different from said at least one goniochromatic coloring agent, wherein the light reflective particles are particles of a synthetic substrate made from glasses and the light reflective particles are at least partially coated with at least one layer of at least one metallic compound*, formulated into (c) a topically applicable, physiologically acceptable medium therefor.

Applicants respectfully submit that claim 66 of the '329 application does not recite the presently claimed goniochromatic coloring agent and light reflective particles that are different from said at least one goniochromatic coloring agent, wherein the light reflective particles are particles of a synthetic substrate made from glasses and the light reflective particles are at least partially coated with at least one layer of at least one metallic compound. Moreover, Applicants respectfully submit that the disclosure of the '329 application does not expressly disclose the presently claimed goniochromatic coloring agent and light reflective particles that are different from said at least one goniochromatic coloring agent, wherein the light reflective particles are particles of a synthetic substrate made from glasses and the light reflective particles are at least partially coated with at least one layer of at least one metallic compound.

As such, in light of at least the foregoing, Applicants respectfully submit that the obviousness-type double patenting rejection of amended independent claim 1 be withdrawn. As claims 6-9, 30-35, 42, and 44-48 directly or indirectly depend from claim 1, the obviousness-type double patenting rejection of claims 6-9, 30-35, 42, and 44-48 should be withdrawn for at least the same reasons.

Accordingly, withdrawal of the obviousness-type double patenting rejection is respectfully requested.

***Conclusion***

Without conceding the propriety of the rejections, the claims have been amended, as provided above, to even more clearly recite and distinctly claim the presently recited subject matter and to pursue an early allowance. For the reasons noted above, the art of record does not disclose or suggest the features recited in the pending claims.

In view of the foregoing claim amendments and remarks, reconsideration of the claims and allowance of the subject application is earnestly solicited. In the event that there are any questions relating to this application, it would be appreciated if the Examiner would telephone the undersigned attorney concerning such questions so that prosecution of this application may be expedited.

In the event any further fees are due to maintain pendency of this application, the Examiner is authorized to charge such fees to Deposit Account No. 02-4800.

Respectfully submitted,

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